

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 165**

This advisory opinion concerns a request by an employee of the Fire Prevention Bureau of the Honolulu Fire Department [Department] to conduct an outside business as a fire safety consultant.

The Ethics Commission [Commission] finds that the employee may be a consultant regarding emergency plans for buildings in jurisdictions other than Oahu, such as neighbor islands, but may not be a consultant on Oahu because 1) providing emergency plans to owners and management of high-rise buildings on Oahu is within the scope of his official duties; and 2) any consulting he might do on Oahu may later be subject to his inspection, review or approval as part of his official duties in the Enforcement Section.

This decision is based on the following facts:

The employee is presently assigned to the Fire Safety and Education Section of the Fire Prevention Bureau. His duties include helping the owners and management of high-rise buildings to develop required fire and life safety emergency plans. Under Department policy, he may be transferred to the Enforcement Section where he would have inspection and approval authority over such plans.

The employee has been offered part-time employment on non-City time as a fire safety consultant. As a consultant, he would also help the owners and management of high-rise buildings on Oahu to develop emergency plans, which the Enforcement Section must approve.

The questions are whether a City employee who engages in outside employment may use expertise gained in the course of official duties and, if so, what restrictions apply to such employment.

Although no previous City advisory opinion explicitly states that employees may use expertise gained in the course of official duties in outside employment, two opinions issued by the State Ethics Commission advised that State employees may do so. The Commission adopts this rule so that the employee may use expertise gained while employed by the Department as a consultant, subject to two City restrictions discussed below.

The first restriction concerns the scope of City employment. Section 11-102.4, Revised

Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH] prohibits City employees from accepting compensation for services which are within the scope of their employment. "Scope of employment" includes what duties an employee has and in what physical area such duties are to be performed. Therefore, employees may perform different work in the same area or perform the same kind of work in a different area.

In addition, two opinions of the State Ethics Commission explain why employees may not accept compensation for work within the scope of employment. In Opinion No. 85, the State Commission found employees had violated standards of conduct because they had accepted money for conducting educational programs the State paid them to initiate and execute. The State Commission stated:

[T]o accept compensation or take compensatory time off to accept compensation for performing duties required by the conditions of their employment would be a use of official position to secure unwarranted advantages or treatment for themselves.

Similarly, in Opinion No. 123 the State Commission cited Opinion No. 85 for the rule that employees may not accept compensation for services which are a part of normal State duties or included within the scope of their employment contract.

The scope of the employee's duties in the Fire Safety and Information Section includes providing assistance in developing fire and life safety emergency plans to building owners and management on Oahu as the Department requires. This is his pre-existing duty. He cannot accept payment from the same owners or management for doing work the Department may require him to do. He may, however, provide such information or plans on neighbor islands for buildings not within the scope of his employment.

The second restriction concerns City employees having the authority to inspect, review or approve work they performed in outside employment. RCH Section 11-102(3) prohibits City employees from engaging in any business transaction or activity or having a financial interest which is incompatible with the proper discharge of official duties or which may tend to impair independence of judgment in the performance of official duties.

Pursuant to this section, previous advisory opinions have consistently found official duties and outside employment incompatible when employees have the duty to inspect, review or approve their own outside work. For example, in Opinion No. 78, a Fire Captain was responsible for inspecting fire extinguishing equipment. In addition, he was an employee of a private company with a contract with the Department to also inspect such systems. In his outside employment, he supervised the testing of the same systems he inspected for the Department. Given these facts, the Commission advised that the employee's official duties and outside employment were incompatible because the employee was performing the same work for two masters. The Commission further expressed the concern that private companies may employ members of the Department to enhance the companies' prestige and to obtain more business.

The Commission finds no distinction between having present and future authority to

inspect, review, or approve one's own outside work. If fire safety plans and procedures do not change as often as duties within the Department under the rotation policy, then an employee now in the Fire Prevention Bureau may have to inspect work performed in the past after transfer to the Enforcement Section.

If the employee becomes a fire safety consultant, his financial interest would be compatible with his present duties in the Fire Safety and Information Section because he does not inspect, review or approve plans. However, it may later impair or tend to impair his independence of judgment because when transferred to the Enforcement Section, he would be required to inspect, review or approve any work on which he consulted on Oahu. Therefore, he must limit his consulting to buildings on the neighbor islands.

In summary, the employee may use as a consultant whatever expertise he has gained in the course of City employment. However, his consulting may not overlap with the scope of his City employment, or be concerned with plans he may be required in the future to inspect, review or approve.

Date: December 18, 1986

JANE B. FELLMETH  
Chair, Ethics Commission